N THE UNITED STATES DISTRICT COURT FOR THE WESTERN
DISTRICT OF PENNSYLVANIA

WRS, INC., d/b/a WRS MOTION PICTURE LABORATORIES, a corporation Plaintiff, v. PLAZA ENTERTAINMENT, INC., a corporation, ERIC PARKINSON, an individual, CHARLES von BERNUTH, an individual and JOHN HERKLOTZ, an individual Defendants	)	No. 2:00-CV-2041-AJS

AFFIDAVIT OF CHARLES VON BERNUTH IN SUPPORT OF REQUEST FOR RELIEF UNDER FED. R. CIV. P. 60

1. My name is Charles von Bernuth and my address is11875 Pradera Road, Santa Rosa Valley, CA 93012.

2. I am making this Affidavit based upon my own personal knowledge of the facts set forth herein and in support of the Motion for Relief under Fed R. Civ. P. 60 that has been filed by my counsel.

3. This matter began when I was named as a defendant in a complaint filed on October 13, 2000 in the Western District of Pennsylvania.

4. Through consultation with another Defendant Eric Parkinson, I came to be represented in this matter by attorney John W. Gibson ("Attorney Gibson").

5. Attorney Gibson also represented co-defendants Plaza Entertainment, Inc. ("Plaza") and Eric Parkinson.

6. From the inception of the representation, Attorney Gibson reported on the matter only sporadically and infrequently. It was not unusual for months and sometimes even more than a year to pass between contacts from Attorney Gibson.

7. This infrequent communication did not cause me alarm, however, because I had no prior experience with being involved in litigation in Pennsylvania and therefore did not know what level of communication to expect from Attorney Gibson. Also, based on the reports that I did receive from Attorney Gibson it seemed to me that he had the case in hand and that things were proceeding well. In fact, at one point I was advised that the case had been dismissed

8. I knew that an appeal from the dismissal had been taken and approximately two years ago, I became aware that following the appeal the Court had entered an order granting a motion by Plaintiff WRS, Inc. ("WRS") to reopen the case.

9. I was also aware that a deposition of Jack Napor of WRS had occurred and that Attorney Gibson had attended a status/settlement conference conducted in the matter in March of 2006.

10. Following the conference, Attorney Gibson informed me that I might be expected to pay a portion of the cost of work by an accounting firm that the Court

had suggested should review the matter. It was not clear whether any payment would be required from me or, if so, the amount of any payment.

11. I raised no objection to paying a portion of the accountant's fee and told Attorney Gibson to let me know if a payment would be required.

12. Throughout the representation, I had always faithfully made payments when Attorney Gibson had requested them.

13. Following the status conference, I did not hear from Attorney Gibson for an extended period.

14. Given the prior course of dealings, where I frequently would not hear from Attorney Gibson for long periods of time, I did not think anything was amiss, and assumed that the issue of payment of an accountant either had not yet been determined or had proved unnecessary.

15. The next communication I received concerning the case was in May of 2007 when Attorney Gibson's other client, Eric Parkinson, sent me an email on which Attorney Gibson was copied. In the e-mail, Mr. Parkinson expressed his understanding that the case had previously been dismissed.

16. Attorney Gibson emailed Mr. Parkinson with a response that I later received from Mr. Parkinson. In the email, Attorney Gibson stated that default judgments had been entered against Mr. Parkinson and against me for failing to pay an account's fee. Through this email I learned ***for the first time*** that a default had been entered against me.

17. I called Attorney Gibson and when I reached him he reaffirmed that the default had supposedly occurred because of failure to pay an account's fee. I pointed out that I had never been requested to pay the fee. Attorney Gibson assured me that the situation could be rectified through the appeal.

18. I then consulted California lawyer, David Fisher, who was able to get additional information and documentation from the Court in Pennsylvania which showed that in fact Attorney Gibson had been doing nothing to represent me for a long period of time and that the failure of representation had led to the entry of the default.

19. Since the time of these events, I have worked diligently through my, to attempt without success to contact Attorney Gibson, to study Court records and learn what had actually been occurring in the case without my knowledge and to retain my present counsel in Pennsylvania.

20. I have defenses to the claims of WRS and am not responsible for failing to take actions to defend myself when I was unaware action was required from me and Attorney Gibson had left me unrepresented.

21. Pursuant to 28 U.S.C. § 1746, I hereby declare under penalty of perjury that the facts set forth in this Affidavit are true and correct based upon my own personal knowledge thereof.

EXECUTED ON OCTOBER 4, 2007

Charles von Bernuth